



## **ADVISORY OPINION 07-12**

Interpretation of T.C.A. §§ 3-6-301, *et seq.*,  
with respect to whether a lobbyist, employer  
of a lobbyist, or lobbying firm may host a fundraiser  
or provide a venue for a fundraising event for a member  
or candidate for the Tennessee General Assembly.

### **INTRODUCTION**

The following Advisory Opinion is in response to a written inquiry from Representative Glen Casada, Chairman of the Republican Caucus of the Tennessee General Assembly, as to whether certain conduct is permitted under the Comprehensive Governmental Ethics Reform Act of 2006 (the “Act”).

Representative Casada inquires as to whether, under the Act, a lobbyist, employer of a lobbyist, or lobbying firm is permitted to host a fundraiser for a member or candidate for the Tennessee General Assembly. In addition, may such an individual or entity provide to the legislator or candidate a venue for holding a fundraising event?

### **ANSWER**

An entity which meets the definition of a lobbying firm is not prohibited from hosting or providing a venue for holding a fundraising event. When the General Assembly is not in session, employers of lobbyists are not prohibited from making campaign contributions. When the General Assembly is in session, employers of lobbyists are prohibited from making direct campaign contributions, but are not prohibited from making the in-kind contributions typically associated with hosting a fundraising event or providing a venue for such an event. Lobbyists, however, are prohibited, both in and out of session, from making any direct or in-kind campaign contributions. Accordingly, lobbyists are prohibited from engaging in any hosting activities which would constitute either a “contribution” or an “in-kind contribution”, and are additionally prohibited from providing to a candidate a venue outside of the lobbyist’s personal residence for less than fair market value.

### **BACKGROUND**

Current members of the General Assembly running for re-election, and new candidates running for a seat in the General Assembly, typically hold a wide variety of fundraising events in support of their campaigns. The costs of hosting such events, which may include costs associated with advertising the event, providing meals and entertainment, etc., may be paid directly by the candidate’s campaign funds or may be donated through an individual or entity “hosting” or providing goods or services for the event. Similarly, the costs of providing a venue in which to hold the event may be paid by the candidate’s campaign fund, may be paid by a 3<sup>rd</sup> party, and/or may be donated by the venue itself.

**DISCUSSION**

Under the Act, may a lobbyist, employer of a lobbyist, or lobbying firm host a fundraiser for a member or candidate for the Tennessee General Assembly? In addition, may such an individual or entity provide the legislator or candidate a venue for holding a fundraising event?

The Act contains several restrictions on campaign contributions by employers of lobbyists and lobbyists, as follows:<sup>1</sup>

T.C.A. § 3-6-304<sup>2</sup>

(i) No employer of a lobbyist or multicandidate political campaign committee controlled by an employer of a lobbyist shall make any campaign contribution to a candidate for the office of governor or member of the general assembly during any regular annual session or any extraordinary session of the general assembly.

(j) No lobbyist shall offer or make any campaign contribution, including any in-kind contribution, to or on behalf of the governor or any member of the general assembly or any candidate for the office of governor, state senator or state representative.

Accordingly, employers of lobbyists are restricted from making campaign contributions while the General Assembly is in session. Lobbyists are prohibited from making such contributions at any time. In addition, lobbyists are prohibited from making *both* “campaign contributions” *and* “in-kind contributions”.

T.C.A. § 3-6-301 defines a “campaign contribution” as follows:

(5) "Campaign contribution" means any contribution as defined by § 2-10-102(4);

T.C.A. § 2-10-102(4) defines “contribution” as follows:

“Contribution” means any advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, personal funds of a candidate, payment, gift, or subscription of money or like thing of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, made for the

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<sup>1</sup> Regarding lobbying firms, T.C.A. § 3-6-301(16) defines a "lobbying firm" as “any firm, corporation, partnership or other business entity that regularly supplies lobbying services to others for compensation.” T.C.A. § 3-6-301(8) exempts such firms from registering as an employer of any lobbyist within the firm. Thus, a lobbying firm is not an “employer of a lobbyist” for the purposes of the Act, and a lobbying firm is otherwise not prohibited under the Act from making campaign contributions.

<sup>2</sup> The Federal Election Campaign Act, 2 U.S.C.A. § 451, et seq., pre-empts state law with regard to campaign contributions. Accordingly, the prohibitions contained in T.C.A §§ 3-6-304(i) through (j) are not applicable to contributions that are made to an incumbent legislator in support of their election to a federal office.

purpose of influencing a measure or nomination for election or the election of any person for public office or for the purpose of defraying any expenses of an officeholder incurred in connection with the performance of the officeholder's duties, responsibilities, or constituent services. "Contribution" shall not be construed to include the following:

- A. Services, including expenses provided without compensation by a candidate or individuals volunteering a portion or all of their time, on behalf of a candidate or campaign committee;

...

- E. The use of real or personal property and the cost of invitations, food and beverages not exceeding one hundred dollars (\$100), voluntarily provided on an individual's residential premises for candidate related activities; or

The Act does not specifically define in kind contributions. However, the Rules of the Registry of Election Finance, Chapter 0530-1-1-.03, defines an in-kind contribution, for the purpose of campaign financial disclosure laws, as follows:

- (6) An in-kind contribution is the provision of any goods or services to a candidate or political campaign committee without charge or at a charge which is less than the fair market value for such goods or services.

...

- (8) Examples of in-kind contributions that are considered goods include, but are not limited to:

- (a) campaign materials, such as campaign literature, brochures, bumper stickers, campaign advertisements;
- (b) postage;
- (c) equipment and other similar supplies;
- (d) Reserved;
- (e) polling or survey data.

- (9) Examples of in-kind contributions that are considered services include, but are not limited to:

- (a) providing of paid personnel for telephone banks and distribution of campaign materials;
- (b) consulting services.

Accordingly, employers of lobbyists and lobbyists may be prohibited from hosting a fundraiser or providing a fundraising venue to a candidate, depending upon the actual activities that such "hosting" entails.

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For example, if a lobbyist volunteered his or her time to provide bartending services for a fundraising dinner (thus saving the campaign the expense of hiring a professional bartender), such activity would constitute a “volunteer service” which is exempted from inclusion in the definition of a “contribution. If instead, the lobbyist’s hosting duties entailed the hiring of professional bartending or wait staff, such hosting activity would constitute the provision of an in-kind contribution that is prohibited by the Act. An employer of a lobbyist may provide the professional staff, however, because the Act does not prohibit employers from making in-kind contributions.

Regarding the exemption from the “contribution” definition for campaign activities on an individual’s residential premises, a lobbyist may host a fundraising dinner in his or her own home, and may also supply the invitations, food and beverages for such dinner, as long as the total cost does not exceed \$100. Or, a lobbyist may provide the use of his or her personal residence, and an employer of a lobbyist may provide the invitations and the catering for the dinner (without monetary limit). In such a case, the use of the lobbyist’s home is exempted from the definition of contribution, and the provision of invitations and catering is an in-kind contribution by an employer of a lobbyist, and thus is not prohibited under the Act.

Regarding the provision of a venue other than a personal residence, a lobbyist is prohibited from providing such a venue unless the candidate pays fair market value for the use of the facility, regardless of whether the lobbyist had to make any actual payment for the use of the facility, because presumably the campaign would otherwise have had to pay fair market value for the use of a suitable venue, and thus the provision of the venue by the lobbyist would constitute an in-kind contribution to the candidate. Because employers of lobbyists are not prohibited from making in-kind contributions, however, an employer of a lobbyist may provide a venue to the campaign for less than fair market value, but may not, while the General Assembly is in session, make a direct payment to the campaign for the purpose of the campaign renting the venue.

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Date: October 23, 2007